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IN THE

Supreme Court of the United States

OCTOBER TERM, 1950.

No. [redacted] 64

UNION STARCH & REFINING CO., A CORPORATION,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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NATIONAL LABOR RELATIONS BOARD,
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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

The Union Starch and Refining Company prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit entered in the above entitled case on April 18, 1951.

OPINIONS BELOW.

The Intermediate Report of the Trial Examiner and the Decision and Order of the National Labor Relations Board including the dissenting opinion of two of the five members (R. 30, 58) are reported in 87 N. L. R. B. 779. The opinion and order of the Court of Appeals for the Seventh Circuit is reported in 186 F. 2d 1008.

JURISDICTION.

The opinion and order of the Court of Appeals was entered on February 2, 1951. (R. 306.) The jurisdiction of this Court is invoked under 28 U. S. C. Section 1254(1).

QUESTION PRESENTED.

Whether an employee who refuses to become a member of a union holding a valid unionshop contract, but tenders an amount of money equal to the initiation fees and dues, is protected from discharge by the provisos of Section 8(a)(3) of the National Labor Relations Act, as amended.

STATUTE INVOLVED.

Labor Management Relations Act, 1947, 61 Stat. 136, 29 U. S. C. A. (1950 Cum. Supp.) Sections 141, *et seq.*[1]

STATEMENT.

Review is sought by this petition of an order of the Court of Appeals for the Seventh Circuit which order granted enforcement of an order of the National Labor Relations Board requiring the Company to cease and desist from certain unfair labor practices and further requiring the Company to take certain affirmative action. (R. 306.) The alleged unfair labor practices arose from the discharge by the Company of three employees. These employees were discharged for failure to become members of a union with which the Company had an admittedly valid union shop contract, that is, a contract requiring *membership* in the Union, after thirty (30) days' employment, as a condition of continued employment. Membership was available to these em-

1. Pertinent sections of the Act are printed in Appendix A of this petition.

ployees upon the same terms and conditions generally applicable to other members of the Union. These employees, however, were unwilling to take the usual steps which are normal incidents of acquiring membership in a labor organization such as attending the Union meeting where their application for membership would be voted upon and taking the usual obligation of membership. In fact, they were entirely unwilling and failed and refused to do anything toward becoming a member other than to tender a sum of money equal to the initiation fees and dues which members of the union were currently paying.[2] (R. 42.)

Upon their discharge, one of the employees, John Ralph, filed charges against the Company and the Union, whereupon complaints were issued by the Regional Director for the Board against both the Company and the Union. Hearings were held before a Trial Examiner who dismissed the complaints on the ground that the charges had not been properly verified in accordance with the Board's Rules and Regulations. (R. 25.) The Board overruled the Trial Examiner (R. 27), and after additional hearings, the Trial Examiner issued his Intermediate Report finding that the Company and the Union had not engaged in unfair labor practices and recommending that the complaints be dismissed in their entirety. (R. 30.) On December 16, 1949, the Board issued its Decision and Order adopting the Trial Examiner's findings of fact with certain minor modifications and additions,[3] but concluding that with respect to these discharges, the Company and the Union were not protected by the provisions of Section 8(a)(3) of the Act. (R. 58.) Two of the five members of the Board dissented, voting to adopt the report of the Trial Examiner. (R. 77.) The Company filed a petition to set aside the Board's De-

2. The facts are set forth in detail in the Trial Examiner's Intermediate Report. (R. 30.)

3. These modifications and additions are in no way important to the decision of this case.

cision ond Order with the Court of Appeals for the Seventh Circuit. (R. 1.) On February 2, 1951, the Court of Appeals entered its opinion and order denying the Company's petition and granting enforcement of the Board's order. From this opinion and order the Company has filed the present petition for a writ of certiorari:

SPECIFICATION OF ERRORS TO BE URGED.

The Court of Appeals erred:

1. In refusing to hold that employees must seek membership and comply with the non-discriminatory and uniform procedures imposed by unions as normal incidents of membership before they are protected from discharge by Section 8(a)(3) of the National Labor Relations Act, as amended.

2. In holding that employees who are unwilling and refuse to become members of a Union, but who tender an amount of money equal to the dues and initiation fees are protected from discharge under a valid union shop contract.

3. In holding that Congress, by enacting Section 8(a)(3)(A) and Section 8(a)(3)(B) of the Labor Management Relations Act of 1947, intended to prevent utilization of union security agreements except to compel payment of dues and initiation fees.

4. In stating that the issue was "whether employees who request union membership and tender initiation fees and dues, but fail to comply with other union imposed conditions for acquisition of membership are protected by the Act from discharge under the terms of a valid union security agreement". (R. 307.)

5. In holding that the charges filed with the Board were properly verified in accordance with the Board's Rules and Regulations or that in the alternative the requirement of such verification might be waived.

6. In holding that an employer is "responsible" for the discharge of employees—within the meaning of that term as it is used in Section 10(c) of the Labor Management Relations Act of 1947—where it appears: (1) the discharges were demanded by the Union; (2) the employer made a thorough investigation after such demand and determined that membership in the Union was available on the same terms and conditions generally applicable to other members; and (3) the employer was threatened with a work stoppage unless it acceded to the Union's demand.

7. In holding that it was within the statutory authority and discretion of the Board to order the Company jointly and severally with the Union to make the discharged employees whole for any loss of pay caused by their discharge.

8. In granting enforcement of the Decision and Order of the National Labor Relations Board.

REASONS FOR GRANTING THE WRIT.

I.

The Court of Appeals Has Decided an Important Question of Federal Law Which Has Not Been but Should Be Settled by This Court.

This case raises for the first time the important question of the limitations placed upon the enforcement of union security agreements by Section 8(a)(3)(A) and Section 8(a)(3)(B) of the Labor Management Relations Act of 1947. In view of the widespread existence of such agreements, the importance of a decision concerning their enforcement is apparent. At the beginning of 1943, more than 45% of all workers under union agreements totalling an estimated six million wage earners, were covered by closed shop or union shop provisions.[4] By 1946, 78% of the

4. Millis & Montgomery, Organized Labor (1945), p. 477.

workers under collective agreements were covered by union security clauses.[5] A recent study of 2,159 collective bargaining agreements covering an estimated 4,000,000 employees discloses that 71% of such agreements contain union security provisions.[6]

The widespread applicability of such agreements is further revealed by the fact that from July 1, 1947 to June 30, 1950, there were 44,836 petitions filed with the National Labor Relations Board requesting elections to authorize the execution of union security agreements,[7] and that about 96% of the elections so held by the Board have resulted in the authorizing of the execution of union security agreements.[8]

The decisions of the Board and the Court of Appeals in this case greatly impair the normal procedure followed by unions under such agreements. Thus, the Union in this case required that applicants for membership take an obligation of membership and attend the union meeting at which their application was to be voted upon as well as tender dues and initiation fees. Such procedures are common in unions everywhere, and it is common knowledge that the mere offer of an amount equivalent to dues and initiation fees is insufficient in order to obtain membership in any union in the United States,[9] yet the Board and the Court of Appeals deny unions the right to require compliance with these established and normal procedures under union se-

5. Millis & Brown, from the Wagner Act to Taft-Hartley (1950), p. 430.

6. Rubenstein, Union Security Provisions in Agreements 1949-50, 71 Monthly Labor Review 224 (1950).

7. Fourteenth Annual Report of the National Labor Relations Board, p. 2; Fifteenth Annual Report of the National Labor Relations Board, p. 3.

8. Fifteenth Annual Report of the National Labor Relations Board, p. 12; Fourteenth Annual Report of the National Labor Relations Board, p. 8.

9. R. p. 38.

curity agreements. Under their decisions unions will no longer be able to utilize union security agreements to maintain a cohesive organization of all the employees, nor can such unions require employees to become members of the union in any real sense of that word. The only advantage which unions will be able to obtain from union security agreements will be the assurance of financial support of all the employees in the bargaining unit. Under this interpretation, union security agreements provide no "union security" whatever, in the sense in which that term is commonly understood, but such agreements are reduced to the level of "support money" agreements.

Such a decision uprooting non-discriminatory existing union practices and effectively destroying union security certainly warrants review by this Court to determine its soundness. Upon such review the Company urges that the court will find that the decision of the Court of Appeals is erroneous for the reasons which are set forth in the next two sections of this brief.

II.

The Decision of the Circuit Court of Appeals Erroneously Interprets the Provisos to Section 8(a)(3).

Section 8(a)(3) of the National Labor Relations Act, as amended, permits unions and employers to make agreements requiring *membership* as a condition of employment.[10] Provisos A and B of this Section place certain restrictions on the enforcement of such agreements. They provide:

> "*Provided further*, that no employer shall justify any discrimination against an employee for non-membership in a labor organization. (A) If he has reasonable grounds for believing that such membership was

10. See Appendix A, page 19.

> not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership."

By the language in Proviso (A) Congress recognized that certain terms and conditions could be imposed on admission into membership in a union as long as they were non-discriminatory. A normal interpretation would construe Proviso (B) so as to preserve this intent and give effect to both provisos. However, the Court of Appeals refuses to give any effect to Proviso (A) and makes Proviso (B) the governing provision in cases of discharges under union security agreements.

The Court of Appeals held that—

> "proviso (A) protects from discharge for nonmembership in the contracting union any employee to whom membership was not available for some discriminatory reason, and that proviso (B) protects the employee who tenders the requisite amount of dues and initiation fee and is denied membership for any other reason, even though that reason be nondiscriminatory."

It is quite obvious that if proviso (B) protects from discharge for non-membership any employee who is denied membership for *any* reason—whether it be a discriminatory or non-discriminatory reason—other than the failure to tender dues and initiation fee, then proviso (B) serves to carry out the complete purpose of Congress as interpreted by the Court of Appeals. Under this interpretation proviso (A) has no effect whatever and is completely inoperative and superfluous.

In reaching this result the Court of Appeals has violated established and basic rules of statutory construction. It is

familiar law that each section of a statute must be construed with every other section, and interpretation may not be confined to the one section to be construed. It is also well established that a statute should be construed so that effect is given to all its provisions so that no one part will be inoperative or superfluous. This court has held[11]—

> "* * * the process of interpretation also misses its high function if a strict reading of a law results in the emasculation or deletion of a provision which a less literal reading would preserve."

In ignoring such rules, the Court of Appeals not only did not have the support of congressional history, but reached a result directly contra thereto. Thus, Senator Taft emphasized the distinction between the two provisos when speaking in the Senate on April 23, 1947. He said (93 Cong. Rec. 3953):

> "In the second place, we have proposed a proviso in the case where a man is refused admittance to a union, when an employer employs a non-union man, and during the first 30 days of his employment he goes to the union and says, 'I want to join the union', but the union refuses to take him. It is provided in such a case the employer shall not be compelled to discharge the man simply because the union will not let him join the union *on the same terms and conditions as any other member.* In effect, we say, 'If you are going to have a union shop, then you must have an open union'. You cannot say to people, 'We have a closed union shop, and we are not going to let you in under any circumstances'.
>
> "The bill further provides that if a man is admitted to the union and *subsequently is fired from the union for any reason other than non-payment of dues, then the employer shall not be required to fire that man.* In other words what we do, in effect, is to say that no one can get a free ride in such a shop. That meets one of the arguments for the union shop. The employee has to pay the Union dues. But on the other hand, if the

11. *Markham* v. *Cabell*, 326 U. S. 404 (1945).

union discriminates against him and fires him from the union the employer shall not be required to fire him from the job. During the testimony we heard of a case in which a union member saw a shop steward hit a foreman. That union member was called to testify in court, and he testified that he saw the shop steward hit the foreman. Subsequently, the union called him before their board for discipline, and said that for him to testify as he did was unfair to the union, although he had been subpoenaed to testify in court and sworn. Thereupon he was fired from the union, and under the union agreement the employer would have to fire him. Under this bill the employer would not have to fire that man unless he did not pay his union dues.

"I think the justice of such an arrangement should be clear as I have said, either we should have an open shop or we should have an open union. I do not believe we should permit the complete exclusion from any industry of a man who wants to work in that industry, and whom the employer wants to employ, and who is perfectly competent to work there, simply because the union says, 'we do not want you and we will not let you in,' or 'we are going to fire you from the union because we do not like the way you act.'" (Emphasis supplied.)

Senator Taft states that in regard to admission into membership in a union the test is whether membership was available on the same terms and conditions generally applicable to other members. In the case of *expulsion* from the union on the other hand, the test is whether the reason for expulsion was one other than non-payment of dues. He thereby carefully distinguishes between the primary application of the two provisos. The same distinction was made by Senator Taft on at least two other occasions when speaking before the Senate.[12] This distinction was also made by the Senate Committee on Labor and Public Welfare in which the language of the present provisos to Section

12. See Appendix B, pages 25-28.

8(a)(3) originated.[13] Certainly as stated by the court below the "statements of those who supported the legislation and secured its passage will be accepted in determining its meaning."[14]

That Congress did not intend, by the enactment of provisos (A) and (B), to reduce union security agreements to the level of "support-money" agreements is conclusively demonstrated by consideration of a statement made by Senator Taft on the Senate floor on May 9, 1947, where he discussed a support money agreement provided for in an award in a Canadian labor arbitration case. He said:

> "Mr. President, while I think of it, I should like to say that the rule adopted by the committee is substantially the rule now in effect in Canada. Apparently by a decision of the justices of the Supreme Court of Canada in an arbitration case,[15] the present rule in Canada is that there can be a closed shop or union shop, and the union does not have to admit an employee who applied for membership, but the employee must, nevertheless, pay dues, even though he does not join the union.
>
> "If he pays the dues without joining the union, he has the right to be employed. That, in effect, is a kind of tax, if you please, for union support, if the union is the recognized bargaining agent for all the men, *but*

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13. See Appendix B, pages 22-23.

14. R. page 311. The colloquy between Senator Pepper, Senators Taft and Ball, cited by the Court in footnote 1 of its opinion (R. page .....)does not express an intent contra to the one above. The particular question which the Senators were discussing was a right of a union to select its own members, not the right of the union to secure an employee's discharge for non-membership in the union. Moreover, Senator Taft did not say anything inconsistent with his more complete statements already cited. The Committee reports cited by the Court repeat the statutory language and therefore do not aid in determining the intent of Congress.

15. Senator Taft's reference to a Canadian decision is to the arbitration between *Ford Motor Company of Canada (Windsor, Ont.) and the UAW-CIO*, decided January 29, 1946, 1 Labor Arbitration Reports 439, 17 LRRM 2782.

there is no constitutional way by which we can do that in the United States." (Emphasis supplied.) 93 Cong. Rec. 5088.

It is beyond belief that Congress intended a result which the sponsor of the Act believed to be unconstitutional.

From the foregoing, it appears that the court has ignored accepted rules of statutory construction and the clearly expressed intent of Congress, and in doing so has deprived unions of all benefits which might flow from union security agreements other than the assurance of a full treasury. Yet, Senator Taft, one of the chief sponsors of the amendment, made the following statement before the Senate on April 23, 1947 (93 Cong. Rec. 3953):

> "Mr. President, I have hesitated to support the complete outlawing of the union shop, because the union shop has been enforced in many industries for many years, and to upset it today probably would destroy relationships of long standing and probably would bring on more strife than it would cure. I think there are abuses. I mentioned three or four during the course of the hearing. With respect to abuses of that kind, we have attempted to deal with them by this proviso."[16]

We have already seen that Senator Taft believed that the method adopted by Congress to prevent abuses under union security agreements did not prohibit requiring an employee to comply with non-discriminatory procedures in order to obtain membership. There was no intention to deprive unions of the advantage of using union security agreements to maintain a cohesive and functioning organi-

16. The abuses which Senator Taft had in mind were as follows: (1) denial of membership in unions to negroes (93 Cong. Rec. 4317), (2) expulsion of employees from the union because they testified against a union steward truthfully under oath (93 Cong. Rec. 4258), (3) expulsion from a union of employees who refused to buy lottery tickets (93 Cong. Rec. 4558), (4) expulsion from a union of employees who refused to pay a special assessment to finance a cause in which they did not believe (93 Cong. Rec. 4258).

zation through non-discriminatory procedures for admission into membership since this could be done and still correct the abuses that existed.

The Company submits that since the decision of the Court of Appeals violates basic principles of statutory construction and is contrary to the expressed congressional intent, it is clearly erroneous and should be reversed.

III.

The Court of Appeals Departed Sharply from the Accepted and Usual Course of Judicial Proceedings in Deciding This Case on an Issue Which Is Completely Different from the Issue Considered and Decided by the Board.

The Court of Appeals states that the issue in this case is (R. p. 307):

> "* * * whether employees who request union membership and tender initiation fees and dues, but fail to comply with other union imposed conditions for acquisition of membership, are protected by the act from discharge under the terms of a valid Union Security Agreement."

However, the Board in stating the issue, does not state that the case involves employees who request membership.[17] That it was immaterial to the Board's decision whether the employees were willing to become members or had requested membership is demonstrated by the fact that the Board failed to make a finding that the three employees were willing to become members, or that they requested membership at the time they tendered an amount equal to dues and

17. The Board's statement of the issue is as follows (R. p. 61): "On these facts, the issue before us is whether an employee who tenders to a union holding a valid union shop contract an amount equal to the initiation fees and dues thereby brings himself within the protection from discharge contained in the Provisos of Sec. 8(a)(3) and 8(b)(2) of the amended Act."

initiation fees, or that the Company had reasonable grounds for believing that the employees were so willing and had made such a request.[18]

The basis of the Board's decision is disclosed by the following statement which appears in its Decision and Order:

> "The employees *were* willing to comply with the only term or condition for membership which we think can, under the provisos, legally be enforced by discharge—the tender of the periodic dues and the initiation fees uniformly required."

And again in footnote 17 the Board sets forth in italics the following statement by Senator Taft to support its decision (R. p. 66):[19]

> "If (an employee) pays the dues without joining the union, he has the right to be employed."

While it is therefore clear that the Board decided that even employees who are unwilling to become members and who do not request membership are protected from discharge as long as they tender amounts equal to dues and initiation fees, it is also clear that such a decision is erroneous. Section 8(a)(3) provides that nothing in the Act shall prevent an "employer from making an agreement with a labor organization * * * to require as a condition of *employment* membership therein * * *." (Emphasis supplied.)[20] To be protected from discharge by Proviso B an employee must be *denied* membership. It is elementary that for anything to be denied, it must be sought, and

18. In the absence of such findings by the Board, the controlling finding is that made by the Trial Examiner that "the two Ralphs and Mary Rawlings, the record amply demonstrates, were entirely unwilling to become members of the respondent union. * * *" (R. p. 42.)

19. The full statement by Senator Taft is set forth above at page 12.

20. See Appendix A, page 19.

therefore by the language of Proviso B, Congress expressed an intent that the employee must be willing to become a member of a labor organization.

Since the Board's decision was erroneous, it should have been set aside by the Court of Appeals. Certainly the Court of Appeals had no right to affirm the Board on an entirely different basis and issue. Thus, it has been stated by this Court in the case of *Securities Exchange Commission* v. *Chenery Corp.*, 318 U. S. 80 (1943) as follows (Pages 87-88):

> "Since the decision of the Commission was explicitly based upon the applicability of principles of equity announced by courts, its validity must likewise be judged on that basis. *The grounds upon which an administrative order must be judged are those upon which the record discloses that its action was based.*
>
> "In confining our review to a judgment upon the validity of the grounds upon which the Commission itself based its action, we do not disturb the settled rule that, in reviewing the decision of a lower court, it must be affirmed if the result is correct 'although the lower court relied upon a wrong ground or gave a wrong reason.' *Helvering* v. *Gowran*, 302 U. S. 238, 245, 82 L. ed. 224, 229, 58 S. Ct. 154. The reason for this rule is obvious. It would be wasteful to send a case back to a lower court to reinstate a decision which it had already made but which the appellate court concluded should properly be based on another ground within the power of the appellate court to formulate. But it is also familiar appellate procedure that where the correctness of the lower court's decision depends upon a determination of fact which only a jury could make but which has not been made, the appellate court cannot take the place of the jury. Like considerations govern review of administrative orders. If an order is valid only as a determination of policy or judgment which the agency alone is authorized to make and which it has not made, a judicial judgment

cannot be made to do service for an administrative judgment. For purposes of affirming no less than reversing its orders, an appellate court cannot intrude upon the domain which Congress has exclusively entrusted to an administrative agency." (Emphasis supplied.)

As noted above, the Board made no finding that these employees sought or requested membership or that they were willing to become members at the time herein involved, or that the Company had reasonable grounds for believing that they had requested or that they were willing to become members.

There is no evidence in the record to support the issue stated by the Court of Appeals. The statement of the issue presupposes facts directly in conflict with the findings of fact made by the Trial Examiner and adopted by the Board. The issue, as stated by the Court of Appeals, is entirely different from the issue upon which the Board based its Decision and Order. This disregard of the facts of this case can only be explained by the failure of the Court of Appeals to give effect to that section of the Taft-Hartley Act which provides that:

> "The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive."[21]

Since the affirmance of the Board's decision has the effect of destroying all union security and affects—substantially and adversely—the administration of thousands of collective bargaining agreements,[22] the violation of established principles of judicial review in order to affirm such a decision justifies review by this Court.

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21. 61 Stat. 148, 29 U. S. C. (Supp. III) Sec. 160 (e).

22. The importance of such a result and of the decision in this case is fully discussed above at pages 5-7.

CONCLUSION.

For the foregoing reasons this petition for a writ of certiorari should be granted.

Respectfully submitted,

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.....

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APPENDIX A.

STATUTES.

Labor Management Relations Act, 1947, 61 Stat. 136, 29 U. S. C. A. (1950 Cum. Supp.) Sections 141 *et seq.*

"Sec. 8(a) It shall be an unfair labor practice for an employer—

* * * * *

"(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided,* That nothing in this Act, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in section 8(a) of this Act as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the representative of the employees as provided in Section 9(a), in the appropriate collective-bargaining unit covered by such agreement when made; and (ii) if, following the most recent election held as provided in section 9(e) the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to authorize such labor organization to make such an agreement: *Provided further,* That no employer shall justify any discrimination against an employee for nonmembership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was de-

nied or terminated for reasons other than the failure of the employee to tender the periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership.

APPENDIX B.

CONGRESSIONAL HISTORY.

1. S. 1126, 80th Cong., 1st Sess. (1947).

(S. 1126 was reported to the Senate on April 17, 1947 by the Committee on Labor & Public Welfare.)

"Sec. 8(a). It shall be an unfair labor practice for an employer—

* * * * *

"(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided,* That nothing in this Act, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in section 8(a) of this Act as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment, (i) if such labor organization is the representative of the employees as provided in section 9(a), in the appropriate collective-bargaining unit covered by such agreement when made; and (ii) if, following the most recent election held as provided in section 9(e) the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to authorize such labor organization to make such an agreement: *Provided further,* That no employer shall justify any discrimination against an employee for nonmembership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members or (B) if he has reasonable grounds for believing that membership was de-

nied or terminated for reasons other than the failure of the employee to tender the dues and initiation fees uniformly required as a condition of acquiring or retaining membership, or (C) if he has reasonable grounds for believing that membership was denied or terminated because of activity designed to secure a determination pursuant to section 9 (c) (1) (A), at a time when a question concerning representation may appropriately be raised."

2. Sen. Rep. No. 105, 80th Cong. 1st Sess. (1947), pages 6-7. (This report by the Committee on Labor and Public Welfare accompanied S. 1126, a portion of which is quoted above.)

"Numerous examples were presented to the committee of the way union leaders have used closed-shop devices as a method of depriving employees of their jobs, and in some cases a means of securing a livelihood in their trade or calling, for purely capricious reasons. In one instance a union member was subpoenaed to appear in court, having witnessed an assault upon his foreman by a fellow employee. Because he told the truth upon the witness stand, the union leadership brought about his expulsion with a consequent loss of his job since his employer was subject to a closed-shop contract. (See testimony of William L. McGrath, id., vol. 4, p. 1982.)

"Numerous examples of equally glaring disregard for the rights of minority members of unions are contained in the exhibits received in evidence by the committee. (See testimony of Cecil B. DeMille, id., vol. 2, p. 797; see also, id., vol. 4, pp. 2063-2071.) If trade-unions were purely fraternal or social organizations, such instances would not be a matter of congressional concern, but since membership in such organizations in many trades or callings is essential to earning a living, Congress cannot ignore the existence of such power.

"Under the amendments which the committee recommends, employers would still be permitted to enter into

agreements requiring all the employees in a given bargaining unit to become members 30 days after being hired if a majority of such employees have shown their intent by secret ballot to confer authority to negotiate such an agreement upon their representatives. But in order to safeguard the rights of employees after such a contract has been entered into, three additional safeguards are provided: (1) Membership in the union must be available to an employee on the same terms and conditions generally applicable to other members; (2) expulsion from a union cannot be a ground of compulsory discharge if the worker is not delinquent in paying his initiation fee or dues; (3) if a worker is denied membership or expelled from the union because he exercises the right conferred on him by the act to work for the change of a bargaining representative at an appropriate time he cannot be discharged.

"It seems to us that these amendments remedy the most serious abuses of compulsory union membership and yet give employers and unions who feel that such agreements promoted stability by eliminating 'free riders' the right to continue such arrangements."

3. 93 Cong. Rec. 3952-53 (Senate; April 23, 1947).

"Mr. Taft.

* * * * *

"There are two conditions which we have imposed even on the union shop. In the first place, the men must vote that they wish to have such a union shop provided for in the contract with the employer, and the vote must carry by a majority of all the men in the unit—not just a majority of those voting, but a majority of all the men in the unit. That follows, in a somewhat reduced form, the bill introduced by the junior Senator from Indiana (Mr. Jenner). Certainly it seems clear to me that unless a majority of the men in the unit want a union shop, they should not have to have a union shop imposed upon them by some agreement made by their leaders, thus giving the leaders increased power over their men.

"In the second place, we have proposed a proviso in

the case where a man is refused admittance to a union, when an employer employs a nonunion man, and during the first 30 days of his employment he goes to the union and says, 'I want to join the union,' but the union refuses to take him. It is provided that in such case the employer shall not be compelled to discharge the man simply because the union will not let him join the union on the same terms and conditions as any other member. In effect, we say, 'If you are going to have a union shop, then you must have an open union. You cannot say to people, "We have a closed union shop, and we are not going to let you in under any circumstances." '

"The bill further provides that if the man is admitted to the union, and subsequently is fired from the union for any reason other than nonpayment of dues, then the employer shall not be required to fire that man. In other words, what we do, in effect, is to say that no one can get a free ride in such a shop. That meets one of the arguments for the union shop. The employee has to pay the union dues. But on the other hand, if the union discriminates against him and fires him from the union, the employer shall not be required to fire him from the job. During the testimony we heard of a case in which a union member saw a shop steward hit a foreman. That union member was called to testify in court, and he testified that he saw the shop steward hit the foreman. Subsequently, the union called him before their board for discipline, and said that for him to testify as he did was unfair to the union, although he had been subpoenaed to testify in court and sworn. Thereupon he was fired from the union and under the union agreement the employer would have to fire him. Under this bill the employer would not have to fire that man unless he did not pay his union dues.

"I think the justice of such an arrangement should be clear. As I have said, either we should have an open shop or we should have an open union. I do not believe we should permit the complete exclusion from any industry of a man who wants to work in that industry, and whom the employer wants to employ, and

who is perfectly competent to work there, simply because the union says, 'We do not want you and we will not let you in' or 'We are going to fire you from the union because we do not like the way you act.'

"Mr. President, I have hesitated to support the complete outlawing of the union shop, because the union shop has been in force in many industries for many years, and to upset it today probably would destroy relationships of long standing and probably would bring on more strikes than it would cure. I think there are abuses. I mentioned three or four during the course of the hearings. With respect to abuses of that kind, we have attempted to deal with them by this proviso."

4. 93 Cong. Rec. 4317-18 (Senate; April 29, 1947).

"Mr. Pepper: Excuse me for a moment.

"In other words, if the employer were to find that, although the man had paid his dues and conformed to certain further union requirements, the union was justified in ejecting him, the employer could not then fire the man, because it would be an unfair labor practice if he were to do so, according to the provisions of the bill from which I have just read.

"I now yield to the Senator from Ohio.

"Mr. Taft: I merely wish to say that of course many persons believe that the union shop, which is the usual form of closed shop, should be absolutely prohibited. The committee did not feel that it should go that far, but the committee felt that if it permitted a union shop agreement which provided that every man must be a member of the union, then the union must be reasonable, must accept as members all who apply for membership, and must accept them on the same terms as it applies to other members, and must permit them to remain in the union if they are willing to pay their dues. In other words, the position of the committee was this: Either we must have an open shop or we must have an open union. We cannot have both.

"One of the cases before the committee that I remember was a case in which a man happened to see a foreman knocked down by a union shop steward. He

was called as a witness in the case in court, and he testified that the steward was the aggressor and had knocked down the foreman. The shop steward was convicted. The Union immediately proceeded to fire that man from the union, and that compelled the employer to fire him from his job. Because he responded to a subpoena and told the truth, that man was fired, and perhaps in that community he could no longer work at the trade in which he was particularly skilled and trained. That is only an example.

"But the only effect of this provision is that there may be a union shop, but if the employees do have a union shop, they cannot compel the employer to fire a man because the union will not admit him.

"Let us take the case of unions which prohibit the admission of Negroes to membership. If they prohibit the admission of Negroes to membership, they may continue to do so, but representatives of the union cannot go to the employer and say, 'You have got to fire this man because he is not a member of our union.'

"So, also, if a union fires a man for some reason other than nonpayment of dues: If the employee is willing to pay his dues to the union, then the union cannot compel the employer to fire him because he is no longer a member of the union, through some action of the union in expelling him. That seems to be only common sense and common justice.

"There seems to be some argument for abolishing the union shop. Personally, I do not think we ought to go that far, because it is an established custom and practice in many industries and has been for many years. But I do think where it is permitted, the unions should be required to let all employees join the union and continue to be members of the union as long as they continue to pay their union dues."

5. 93 Cong. Rec. 5087-88 (Senate; May 9, 1947).

"Mr. Taft: Mr. President, this amendment, as I understand, proposes completely to abolish the union shop. I recognize the strength of the argument made in that behalf by the Senator from Minnesota. We

considered the arguments very carefully in the committee and I myself came to the conclusion that since there had been for such a long time so many union shops in the United States, since in many trades it was entirely customary and had worked satisfactorily, I at least was not willing to go to the extent of abolishing the possibility of a union-shop contract. It seemed to me that we should meet the problem of dealing with the abuses which had appeared. That is what the committee bill does.

"Incidentally, it abolishes the closed shop, insofar as that means that only members of the union can be employed. That is the hiring-hall proposition. But the bill permits the union shop, which is the customary form of employment in the United States. If a majority of the employees are in favor of the union shop, the bill will permit the union shop; but the bill requires a majority of the employees to vote that they are in favor of having a union shop, so that it will be definitely known that they are in favor of it, rather than that the union leaders are simply asking for it, so as to have more power over the members of the union and over all the employees.

"In the bill we say that the employee must join the union within 30 days after he is employed.

"We say that if at that time the union will not admit the employee as a member of the union, on the same terms and conditions as those on which any other member of the union is admitted to it nevertheless the employer can continue to employ that man. That provision takes care of arbitrary rules on the part of unions. It takes care of cases similar to one in New York in which 10 men were fired because the union made a rule that it would not permit anyone to continue in membership unless he was the son of a man already working in that plant and a member of that union.

"There are also many abuses in connection with the firing of men. We further provide in the bill that if a man is fired by the union for some reason other than nonpayment of dues, the employer does not have to discharge him. The abuse at which that provision is

aimed is the usual type of abuse, and is the only type of abuse testified to. We have taken care of that in the committee bill.

"We had testimony regarding the case of a union member who saw a shop steward knock down a foreman; and the union member was subpoenaed to testify in court in the assault case. He testified truthfully that he saw the shop steward take the offensive and knock down the foreman. Thereupon, the union said that such testimony was contrary to good union practice, even though the union member had been subpoenaed and was under oath to testify to the truth; and the union discharged him from union membership, and the employer had to discharge him, under the existing closed-shop contract.

"In a case of that sort, the committee bill provides that the employer does not have to fire the employee. The union can discharge him from union membership if it wishes to do so, but the employer does not have to discharge him from employment.

"My own philosophy is that we have to decree either an open shop or an open union. The committee decreed an open union. I believe that will permit the continuation of existing relationships, and will not violently tear apart a great many long-existing relationships and make trouble in the labor movement; and yet at the same time it will meet the abuses which exist.

"So I think it would be a mistake to go to the extreme of absolutely outlawing a contract which provides for a union shop, requiring all employees to join the union, if that arrangement meets with the approval of the employer and meets with the approval of a majority of the employees and is embodied in a written contract."

6. 93 Cong. Rec. 4258 (Senate; April 28, 1947).

"Mr. Ellender: I am deeply grateful to the Senator for that kind remark.

"Mr. President, before I was interrupted I was discussing the abuses which grew up in the past 10 years. A moment ago I dealt with jurisdictional strikes and secondary boycotts. Now I wish to say a few words in

respect to the abuses which occurred because of compulsory union membership. I am now referring to the subject matter of an amendment which the committee has proposed to the Wagner Act. I did not believe that amendment would receive the support which it got in the committee. I refer to the amendment providing for the abolition of the closed shop. It outlaws the closed shop altogether. Several of the witnesses who appeared before the committee gave a number of examples of the abuses which were engaged in by unions who had a closed shop. One of the cases was that of Cecil B. DeMille, who, as we know, is a producer of motion pictures on the west coast. He is also a radio commentator. Mr. DeMille was forced to join a union in order to be able to appear on the radio. Soon after he joined the union he was asked to make a contribution to a cause in which he did not believe.

"He refused to make such a contribution. Then what happened? The union kicked him out; it said, 'We do not want you as a member any more.' Up to this moment, Mr. President, Mr. DeMille has not been able to make any further broadcasts on the radio, simply because he violated the rules of the union to which he belonged. Now here was a man called upon to put up a contribution to fight a cause in which he did not believe and because he refused to pay the assessment made on him he was kicked around and is now unable to pursue his work. Such a situation is intolerable and must be corrected. The pending measure, as I will show better corrects such an evil.

"Let us consider the McGrath case, in which a union member was called into court to testify in regard to a fight which occurred between a union member and a foreman. Because Mr. McGrath went to court, in response to a court summons, and testified to the truth, he was kicked out of the union, which meant the loss of his job.

"Consider the Edmonson case. When Mr. Edmonson said he would be a candidate against John L. Lewis for the presidency of the United Mine Workers Organization, and when he made an attempt to run against John L. Lewis, he was kicked out of the union and was

forbidden to have any employment in any coal mine in which the UMW had a contract.

"Mr. President, we wish to stop all such foolishness; and the bill now before the Senate would do just that."

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In the Supreme Court of the United States

OCTOBER TERM, 1951

No. 64

UNION STARCH AND REFINING COMPANY, A CORPORATION, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court below (R. 306-315) is reported at 186 F. 2d 1008. The decision and order of the National Labor Relations Board (R. 58-84) are reported at 87 NLRB 779.

JURISDICTION

The decree of the court below was entered on April 18, 1951 (R. 320-323). The petition for a writ of certiorari was filed on May 19, 1951. The

jurisdiction of this Court is invoked under 29 U. S. C. 1254 (1), and under Section 10 (e) of the National Labor Relations Act, as amended.

QUESTION PRESENTED

Whether, as the Board and the court below held, employees who request union membership and tender initiation fees and dues, but fail to comply with other union-imposed conditions for acquisition of membership, are protected by the Act from discharge under the terms of a valid union security agreement.[1]

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act, as amended by the Labor Management Relations Act, 1947 (61 Stat. 136, 29 U. S. C., Supp. III, 141, *et seq.*), are set forth in the Appendix, *infra,* pp. 19-22.

STATEMENT

Prior to December 7, 1947, petitioner's employees at its Granite City plant were represented by a local of the International Chemical Workers Union, AFL (R. 33-34; 300).[2] On that date the American Federation of Grain Millers, Local 153,

[1] Petitioner's statement of the question (Pet. 2) assumes, contrary to the finding of the Board, sustained by the court below (see pp. 16-17, *infra*), that the employees refused to become members of the Union. To the extent that petitioner thus appears to challenge the Board's finding, this case presents no more than a question of substantial evidence, which does not warrant review by this Court.

[2] Where in a series of record references a semicolon appears, the references preceding the semicolons are to the Board's findings, and those following it are to the supporting evidence.

AFL (hereafter called "the Union")[3] supplanted the Chemical Workers as the employees' bargaining agent (R. 34; 300). Two months thereafter, on February 11, 1948, a majority of the employees in an election held pursuant to Section 9 (e) of the Act authorized the Union to negotiate a union security contract with petitioner (R. 34; 300). On April 2, 1948, petitioner and the Union executed an agreement requiring, as a condition of continued employment, that (1) workers then in petitioner's employ become members of the Union within 30 days and (2) new employees become members within 30 days following date of hire (R. 59; 255, 300). On April 5, petitioner posted this union security provision on its bulletin boards in the plant, with a notation that it constituted part of a collective bargaining contract that had been entered into with the Union on April 2, 1948 (R. 34; 92, 180, 260-261).

On April 28, 1948, after discussing the matter among themselves and deciding to comply with the terms of the union shop agreement, a group of 10 or 12 of these employees appeared at Union headquarters in order to become Union members and to pay their initiation fees and dues (R. 34; 97, 98, 123-125, 157, 158, 160-166, 180-181, 210). The group had no spokesman and the first to talk with the business representative of the Union, S. B.

[3] Prior to the hearing before the trial examiner, the Union was designated as "Grain Processor's Independent Union, Local No. 1" (R. 207).

Bloodworth, was employee John Ralph (R. 182-184). Although he was not a member of the Union, employee Ralph had earlier expressed to Union leaders his approval of a union shop contract, and on several occasions had indicated his willingness to be a member of the Union, attend its meetings and pay his dues (R. 61; 95, 115-117, 122, 150-152, 156). However, as known by Union Agent Bloodworth, both Ralph and his wife, also a nonmember employee, had religious convictions which forbade them to take an oath of any kind, including the oath of membership required of all new Union members (R. 60-61; 96, 116, 122-123, 125, 158).[4]

When he spoke to Union Agent Bloodworth on April 28, Ralph asked to pay full initiation fees and dues for himself and his wife in order that they might become members of the Union (R. 60; 98-99, 157-158, 161).[5] Bloodworth refused the offer, stating that three conditions had to be satisfied before membership could be achieved and initiation fees and dues became payable. These were (1) filling out of an application card, (2) an appearance at a Union meeting so as to be voted on, and (3) the

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[4] This oath reads (R. 268): "I * * * pledge my honor to faithfully observe the laws of this Union; to comply with all rules and regulations for the government thereof, not to divulge or make public any of the private proceedings of this Union; to faithfully perform all the duties assigned me to the best of my ability, and skill; to so conduct myself at all times as not to bring reproach upon my Union and at all times to bear true allegiance to the American Federation of Labor."

[5] Although Nellie Ralph did not appear as a witness, it was stipulated that John Ralph spoke for her as well as himself in tendering dues and initiation fees to the Union (R. 204-205).

taking of the oath of loyalty (R. 60; 98-99, 183-184). Ralph told Bloodworth that he did not care whether the latter made out applications for him and his wife, but that they would never take an oath and that they would not sign anything that would obligate them to do so (R. 34; 128, 184). When Bloodworth made it clear that the oath was a condition precedent to Union membership, the Ralphs left without further conversation (R. 99, 127-128, 184).

Upon the departure of the Ralphs, another of the assembled employees attempted to pay his initiation fees and dues, but again Union Agent Bloodworth refused to accept the money (R. 60; 185). He reiterated the necessity, under the Union constitution, of complying with the three prerequisites to membership before dues and initiation fees could be accepted (R. 60; 185). He further stated that application cards could only be filled out by himself on the basis of information provided by the employee (R. 60; 98-99, 186). Various employees in the group indicated that they were willing to follow the procedure described by Bloodworth, whereupon the latter filled out application cards for each person remaining in the room (R. 34; 186-187, 247-248). Included in this number was employee Mary Rawlings, who had earlier joined in the unsuccessful attempt to pay initiation fees and dues (R. 34; 210, 213-214). She voluntarily furnished Bloodworth with the necessary information to fill out her application card (R. 34; 210, 214). When the

cards were completed, Bloodworth told the group that the next Union meeting would be held on May 6, whereupon everyone departed (R. 34; 188, 222-223, 246-247).

John and Nelly Ralph, Mary Rawlings and several other nonmember employees failed to attend the Union meeting on May 6 (R. 34; 157, 248). On the day following that meeting, without reference to the failure to attend it, the Union informed petitioner by letter that a number of employees had failed to pay initiation fees and dues as required by the union shop clause of the collective bargaining agreement, and demanded their discharge (R. 34-35; 205, 262). Among the employees named in the letter were John and Nellie Ralph and Mary Rawlings.

Upon receipt of this communication petitioner undertook an investigation to determine whether Union membership was available to the enumerated employees on the same terms and conditions generally applicable to other members (R. 60; 205-206). Herman Parr, petitioner's personnel director, conducted personal interviews on May 7, 8 and 10, with each of the employees in question, during which the employees fully apprised him of the Union's imposition of conditions of union membership other than the tender of dues (R. 35; 100, 218-219, 241-243). At the interviews Parr showed to each employee the Union's demand for discharge and asked that he make a signed statement of his

position on the matter (R. 35; 101, 218). These employees thereupon submitted written declarations that they had tendered their initiation fees and dues to the Union on April 28, but that the tender was rejected on the ground that they had not fulfilled other Union-imposed conditions of membership (R. 35; 262, 264, 265, 266).

Employee Rawlings was interviewed a second time on May 11 by petitioner's plant manager, Curry, at which time she said that she did not feel obliged again to tender her initiation fee and dues inasmuch as her earlier offer had been rejected (R. 35; 225-226, 241-242). However, she was willing to take the Union oath of obligation although she was uncertain whether she should do so in view of her membership in another AFL union (R. 226-228). She wanted time to obtain advice on this matter (R. 228). Employee Rawlings had no objection to attending a Union meeting in order to have her application voted on, but she had not attended the May 6th meeting because her husband had broken his finger and needed her care (R. 223). However, she had "had an application for membership submitted in her behalf to the * * * Union and * * * she was accepted for membership in that organization" (R. 207).

On May 12, 1948, petitioner received another letter from the Union in which it was stated that the Union uniformly required all applicants for membership to attend a regular union meeting for

the purpose of having their applications voted on, and requested the discharge of employees who had failed to comply with this condition of membership (R. 60; 205-206). Petitioner was threatened with a work stoppage unless it acceded to the Union's demand (R. 206). Thereupon, petitioner again called in the employees who were not Union members and handed each of them a written questionnaire which was to be filled out and returned early the following morning (R. 60; 104-106, 217-218). The questionnaire was as follows (R. 263):

> (1) Are you willing to tender the periodic dues and the initiation fees uniformly required by Grain Processors Union, Local No. 1 as a condition of acquiring membership?
>
> _____ Yes _____ No
>
> (2) Are you willing to take the obligation as a member of Grain Processors Union, Local No. 1, which is required by the Union of all applicants for membership?
>
> _____ Yes _____ No
>
> (3) Are you willing to meet the requirement imposed by Grain Processors Union, Local No. 1, upon all applicants for membership that such applicants attend the regular union meeting at which their application for membership is voted upon, unless excused therefrom because of work schedule or sickness?
>
> _____ Yes _____ No

With the exception of John and Nellie Ralph and Mary Rawlings, all of the nonmember employees returned the questionnaire answering its three questions "yes," and subsequently were admitted into the Union (R. 60; 206-209). The Ralphs and Mary Rawlings, who had complained of lack of time to get advice and lack of space to explain their answers (R. 61; 106-108, 136, 138, 228), returned their copies of the questionnaire without filling out the answers (R. 60; 206-207). Accordingly, on May 13, 1948, the Company discharged these three employees in order to comply with the Union's demand (R. 60; 112, 207, 211-212).

The Board found that petitioner (the Company) "discharged the Ralphs and Rawlings, on May 13, 1948, because they were nonmembers of the * * * Union. As the * * * Company knew that the dischargees had tendered the periodic dues and the initiation fees uniformly required as a condition of membership, without being accorded membership, we find that the * * * Company discriminated in regard to hire or tenure of employment to encourage membership in the * * * Union in violation of Section 8 (a) (3) of the amended Act, and thereby interfered with, restrained, or coerced employees in the exercise of the rights guaranteed in Section 7, in violation of Section 8 (a) (1)" (R. 68).

The Board further found that the "Union demanded the discharge of employees to whom it had

not granted membership on grounds other than their failure to tender the periodic dues and the initiation fees uniformly required. As the * * * Company violated Section 8 (a) (3) in making the discharges which the * * * Union demanded, we find that the * * * Union caused the employer to discriminate against these employees, and thereby violated Section 8 (b) (2)." In addition, the Board found "that, by causing the * * * Company discriminatorily to discharge such employees through the illegal application of its contract, the * * * Union restrained and coerced employees in the exercise of the rights guaranteed by Section 7, and thereby also violated Section 8 (b) (1) (A) of the amended Act" (R. 68-69).[6]

The Board's order requires both petitioner and the Union, jointly and severally, to make the discharged employees whole for any loss of pay they may have sustained because of their wrongful discharge (R. 72-73). The Board's order further requires petitioner to offer these employees reinstatement and directs petitioner and the Union to cease and desist from engaging in the particular acts found unlawful or from in any other manner interfering with employees in the exercise of their rights under Section 7 of the Act (R. 70-72).

The court below unanimously affirmed the Board's findings and enforced in full the Board's order (R. 306-315).

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[6] Board Members Houston and Reynolds dissented from these findings (R. 77-84).

ARGUMENT

The Board has concluded that, under proviso (B) to Section 8 (a) (3) of the Act, an employee who has requested union membership and tendered initiation fees and dues may not be discharged pursuant to a union security agreement, even though he fails to meet *other* nondiscriminatory conditions imposed by the union for acquisition of membership.[7] The court below held that (R. 310): "the Board construed the statute in a reasonable manner and gave effect to all its provisions, and . . . its interpretation was in harmony with the purpose of Congress to prevent utilization of union security agreements except to compel payment of dues and initiation fees . . ." Petitioner's contrary contentions present no substantial question warranting review by this Court.

1. Petitioner's argument (Pet. 8-9) that the Board's interpretation renders proviso (A) superfluous is readily disproved. Proviso (A), by its terms, protects an employee from discharge for nonmembership in a union if "such membership was not available to the employee on the same terms and conditions generally applicable to other members." The relevant terms of proviso (B), on the other hand, are: "membership was denied . . . for

[7] Writers in the field have uniformly reached the same conclusion. See Cox, *Some Aspects of the Labor Management Relations Act, 1947*, 61 Harv. L. Rev. 1, 274, 297 (1948); Note, 33 Iowa L. Rev. 539, 552 (1948); Note, 96 U. of Pa. L. Rev. 101, 111 (1947); Note, 32 Minn. L. Rev. 796, 804 (1948).

reasons other than the failure of the employee to tender . . . periodic dues and . . . initiation fees." Proviso (B) thus applies only where membership is available to the employee on equal terms and the employee has tendered dues and initiation fees. If, however, union membership is not available on equal terms, proviso (A) accords immediate protection against discharge. Where discrimination exists, the employee is required neither to undergo the useless and embarrassing procedure of requesting membership nor to make a tender of dues and initiation fees. See *Kaiser Aluminum and Chemical Corp.*, 93 NLRB, No. 178, 27 LRRM 1513 (March 28, 1951). Thus, under the Board's interpretation, the provisos, consistent with the term "or" which connects them, afford protection to employees against discharge for nonmembership in alternative situations. And the manifest purposes of Congress—both to forbid discriminatory exercise of union power and to sanction the efforts of non-discriminatory unions to eliminate "free riders" enjoying union benefits without obligations (see pp. 14-15, *infra*)—are effectuated.

Petitioner's construction, rather than the Board's, results in a superfluous proviso. If, as petitioner contends, an employee is not protected against discharge unless he fulfills *all* nondiscriminatory conditions for membership, proviso (B) is rendered useless in respect to governing acquisition of union membership. The broad phrase "terms

and conditions generally applicable to other members," found in proviso (A), would be sufficient to cover, as one of the requirements of admission into the union, the payment of dues and initiation fees specified in proviso (B). In short, proviso (A) becomes the sole provision governing the acquisition of union membership and proviso (B) is confined to the role of governing the conditions for expulsion from membership. Such a construction of the provisos, as we show below, is untenable.

2. Petitioner's argument (Pet. 9-11), that proviso (A) governs admission into union membership, and that proviso (B) is limited to expulsion from union membership is refuted by the language of proviso (B). Proviso (B) contains the phrases "membership was *denied* or terminated" and "condition of *acquiring* or retaining membership" (emphasis supplied). To read proviso (B) as covering only retention of union membership virtually deletes the words "denied" and "acquiring." Further, the term "initiation fees" as used in proviso (B) could apply only to employees seeking initial membership.

The extracts from the legislative history of proviso (B), which illustrate its operation by cases where employees have been *expelled* from a union (Pet. 9, 25-28), cannot, of course, override the precise words used in the proviso. Moreover, other parts of the legislative history completely nullify the inference which petitioner has drawn from

these extracts; they show beyond question that proviso (B) covers *admission* into union membership. Thus, in a colloquy with Senators Ball and Pepper, Senator Taft, in explaining the effect of proviso (B), stated: "The union could refuse the man *admission* to the union . . . but if he were willing *to enter* the union and pay the same dues as other members of the union, he could not be fired from his job because the union refused *to take* him" (emphasis added).[8]

3. Petitioner's argument (Pet. 11-13) that the Board's interpretation subverts the intention of Congress is also without merit. The legislative history clearly discloses that Congress, after weighing the abuses against the social advantages attributed to union security agreements, concluded that such agreements were desirable only as a means of requiring employees to share the cost of unionization. As Senator Taft stated: "what we do, in effect, is to say that no one can get a free ride in [a shop with a union security agreement]. That meets one of the arguments for the union shop. The employee has to pay the union dues."[9]

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[8] 93 Cong. Rec. 4272, in 2 Leg. Hist. 1141-1142. See also, H. Rep. No. 245, 80th Cong., 1st Sess., 32, 1 Leg. Hist. 323; H. Conf. Rep. No. 510, 80th Cong., 1st Sess., 41, 1 Leg. Hist. 545. All of these references were considered by the court below (R. 311-312). Note, in addition, the statement of Senator Smith, another proponent of the proviso, 93 Cong. Rec. 4284-4285, 2 Leg. Hist. 1151.

[9] 93 Cong. Rec. 3837, 2 Leg. Hist. 1010. See also, 93 Cong. Rec. 4887, 2 Leg. Hist. 1422; S. Rep. No. 105, 80th Cong., 1st

The Board's interpretation of the proviso to Section 8 (a) (3) carries out this limited objective; thereunder, the tender of dues and initiation fees is the only condition for the acquisition of union membership which may be enforced by discharge. By contrast, petitioner's interpretation would enable a union, so long as these conditions were applied equally, to deny membership and thus cause loss of employment to employees who have engaged in dual unionism, entertained "unorthodox" political beliefs, or, as here, (*supra,* pp. 4-5), refused to take an oath which conflicted with religious conviction. This is precisely the kind of control over employment which Congress desired to take away from unions holding union security agreements.[10]

4. Petitioner's argument (Pet. 6-7) that the Board's interpretation negates the major advan-

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Sess., 6-7, 1 Leg. Hist. 412-413. The Joint Committee on Labor-Management Relations had the same view: Report No. 986, Part 3, 80th Cong., 2nd Sess., p. 52.

The statement of Senator Taft relied on by petitioner (Pet. 11-12) does not require a different conclusion. Senator Taft was merely suggesting that it might be unconstitutional to compel an employee to pay union dues, *even though* he had been *refused admission* into the union. This is entirely different from the question of whether an employee may be compelled to make an *offer* of membership and of dues, which, if rejected, entails no further obligation to the union. To such extent, at least, it is apparent from the citations previously listed that Senator Taft, as well as other members of Congress, considered that union shop agreements served legitimately to eliminate "free riders."

[10] See S. Rep. No. 105, 80th Cong., 1st Sess., 21-22, 1 Leg. Hist. 427-428; 93 Cong. Rec. 3837, 4135, 4191-4192; in 2 Leg. Hist. 1010, 1061-1062, 1094-1096.

tages believed to inhere in union security agreements is more properly addressed to Congress than to this Court. Congress deliberately restricted enforcement of union security agreements to the tender of dues and initiation fees (*supra,* pp. 14-15). Thus, as the Board observed (R. 67): "That decision is binding upon us, whether or not we think it wise, practical or fair." And, as this Court has said: "It is not necessary for us to justify the policy of Congress. It is enough that we find it in the statute." *Colgate-Palmolive-Peet Co.* v. *National Labor Relations Board,* 338 U. S. 355, 363.

5. Equally insubstantial is petitioner's contention (Pet. 13-16) that the court below decided the case on a theory different from that of the Board. The Board's interpretation of proviso (B), like that of the court below, rests on the premise that the employees here not only tendered dues and fees but also manifested a desire to become Union members. Thus, as the Board found, "John Ralph, who was also his wife's spokesman, repeatedly told [Union agent] Bloodworth that he was willing to pay his dues *and* become a member and that he was willing to attend union meetings" (R. 61, n. 1). Similarly, the actions of Mary Rawlings on April 28 (*supra,* p. 5) show that she desired union membership. Indeed, her application for membership was thereafter favorably voted on (*supra,* p. 7); as the Board observed (R. 66):

"membership was 'denied' [Rawlings] even after her application was 'favorably voted upon,' because the Union imposed conditions of membership over and above the tender of dues and initiation fees."

The fact that the Ralphs and Rawlings refused to comply with these *other* conditions does not, of course, mean that union membership was neither sought nor denied. As the Board stated (R. 65): "The employees *were* willing to comply with the only term or condition for membership which we think can, under the provisos, legally be enforced by discharge—the tender of periodic dues and the initiation fees uniformly required." If membership had to be "sought" on the union's own terms before there could be a denial of membership within the meaning of proviso (B), the policy expressed by the proviso would obviously be subverted. A union would then be permitted to enforce by discharge conditions for acquisition of membership other than tender of dues and initiation fees. As we have shown, Congress plainly proscribed the exercise of such power.

CONCLUSION

The decision below is clearly correct and no conflict of decisions exists or is claimed. The petition for a writ of certiorari should be denied.

Respectfully submitted,

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APPENDIX

The relevant provisions of the National Labor Relations Act, as amended by the Labor-Management Relations Act, 1947 (61 Stat. 136, 29 U .S. C., Supp. III, 141, *et seq.*), are as follows:

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3).

SEC. 8 (a) It shall be an unfair labor practice for an employer—

"(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

* * * * *

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided,* That nothing in this Act, or in any other statute of the United States, shall preclude an employer from making an agree-

ment with a labor organization (not established, maintained, or assisted by any action defined in section 8 (a) of this Act as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective-bargaining unit covered by such agreement when made; and (ii) if, following the most recent election held as provided in section 9 (e) the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to authorize such labor organization to make such an agreement: *Provided further,* That no employer shall justify any discrimination against an employee for nonmembership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

* * * * *

(b) It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: *Provided,* That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; * * *

(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a) (3) or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

* * * * *

SEC. 9. * * *

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(e) (1) Upon the filing with the Board by a labor organization, which is the representative of employees as provided in section 9 (a), of a petition alleging that 30 per centum or more of the employees within a unit claimed to be appropriate for such purposes desire to authorize such labor organization to make an agreement with the employer of such employees requiring membership in such labor organization as a condition of employment in such unit, upon an appropriate showing thereof the Board shall, if no question of represen-

tation exists, take a secret ballot of such employees, and shall certify the results thereof to such labor organization and to the employer.

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